

EXHIBIT 2

TO THE SUPPLEMENTAL DECLARATION OF MICHELLE M. UMBERGER IN SUPPORT OF SUMMARY JUDGMENT OF UNENFORCEABILITY OF THE PATENTS-IN- SUIT DUE TO INEQUITABLE CONDUCT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, a California
corporation,

Plaintiff,

vs.

No. C 0305669 (JW)

MICRO THERAPEUTICS, INC., a
Delaware corporation, and
DENDRON GmbH, a German
corporation,

CERTIFIED

COPY

Defendants and
Third Party Plaintiffs,

vs.

BOSTON SCIENTIFIC
CORPORATION, a Delaware
corporation, and TARGET
THERAPEUTICS, INC., a
Delaware corporation,

Third Party Defendants.

DEPOSITION OF FRANCO COSSU

Los Angeles, California

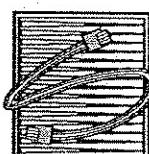
Wednesday, May 18, 2005

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1 conversations with Dr. Gugliemi?

2 A Any conversation?

3 Q That's correct.

4 A I don't recall if I had previous
5 conversations with the man.

6 Q So you arrived at the translation of
7 "breakdown" on your own. How did you do that?

8 A Because of "rottura," it is "breakdown," it
9 is a breakdown of the electro tip, the tip broke down.

09:46 10 Q There is a footnote there. Do you see the
11 translator's note? The term "breakdown" is used here
12 in its meaning of decomposition?

13 A Uh-huh.

14 Q Did you come to that conclusion on your own
15 as well?

16 MR. PREMO: Objection; calls for
17 attorney-client communication, privileged.

18 MS. UMBERGER: I'm asking for a yes-or-no
19 answer. Are you instructing him not to answer?

09:47 20 MR. PREMO: Yes.

21 (Instruction not to answer.)

22 BY MS. UMBERGER:

23 Q Did you draft the translator's note that we
24 see on U10443?

25 A Yes.

1 training beyond what we discussed earlier in your
2 classical training?

3 MR. SCHWILLINSKI: Objection; asked and
4 answered.

5 THE WITNESS: No.

6 BY MS. UMBERGER:

7 Q Was it your understanding prior to speaking
8 to either Dr. Gugliemi or Attorney Dawes that the
9 stainless steel electrode could only decompose in
09:50 10 these experiments?

11 A Would you rephrase the question, please?

12 Q Sure. Sure.

13 You stated that you concluded that
14 "breakdown" was used here to mean "decomposition" from
15 the first paragraph on U10443; is that correct?

16 A In connection with that, it made sense, yes.

17 Q And what part of that sentence led you to
18 believe that the electro tip decomposed?

19 A Because electrolyzation is basically a
09:51 20 decomposition process, it is an electrical -- it is a
21 chemical decomposition caused by the electrical
22 signals flowing from positive to negative, and the
23 transformation into ions of the particular chemicals
24 involved.

25 Q Why didn't you simply use the word

1 "decomposition" in your translation rather than
2 "breakdown"?

3 A Because a translator has to try and be as
4 accurate as possible. I was using words that are --
5 if they exist in both languages and they are similar
6 and reflect the same meaning, especially in legal
7 translation.

8 Q Did you talk to Attorney Dawes about the
9 translator's note that we see on U10443 prior to
09:52 10 drafting it?

11 MR. PREMO: Objection; calls for an
12 attorney-client communication, privileged.

13 MS. UMBERGER: And are you instructing him
14 not to answer?

15 MR. PREMO: Yes.

16 (Instruction not to answer.)

17 BY MS. UMBERGER:

18 Q Did you speak to Attorney Dawes about the
19 translation of "rottura" prior to preparing this May
09:52 20 27th, 1996 translation?

21 MR. PREMO: Objection; privileged, calls for
22 attorney-client communication.

23 MS. UMBERGER: And you're instructing not to
24 answer every time you make that objection? I just
25 want to make the record clear.

1 MR. PREMO: Yes.

2 (Instruction not to answer.)

3 BY MS. UMBERGER:

4 Q Are there any prior drafts of this
5 translation?

6 A Not in my possession.

7 Q Were there ever any prior drafts of this
8 translation?

9 A I guess -- I can only answer your question
09:53 10 based on my general practice, and I probably had it in
11 my computer and I just write over it. I don't keep a
12 draft 1, 2, you know, none of this petty kind of
13 business.

14 Q Do you recall if you ever sent any other
15 draft of the translation, other than the one we see in
16 Exhibit 224, to either Dr. Gugliemi or Attorney Dawes?

17 MR. PREMO: Objection; assumes facts not in
18 evidence.

19 BY MS. UMBERGER:

09:53 20 Q Do you recall if you sent any other
21 translation of the 1983 Bari paper?

22 A No, I don't recall, and I don't think I did.

23 Q Can the Italian word "rottura" mean "break"?

24 A Yes.

25 Q Would you say that -- strike that.

1 English dictionaries in your office?

2 A My office, I have a wide variety of -- and
3 reference works, particularly Italian Enciclopedias.

4 Q Was there any particular reference that you
5 consulted more than others?

6 MR. SCHWILLINSKI: Objection; vague.

7 BY MS. UMBERGER:

8 Q You can answer if you understand.

9 A I generally use the 28 or 33 volumes now with
09:56 10 the addition, this so-called -- oh, my goodness the
11 scenario that I have is 28 volumes, and it is the
12 reference, it is called the Treccani Encyclopedia
13 Institute of Treccani, T-r-e-c-c-a-n-i.

14 Q Do you recall if you consulted that reference
15 while you were translating the 1983 Bari paper?

16 A I do not recall.

17 Q If I asked you for an Italian word for
18 "decomposition," what would you give me, just
19 generally?

09:57 20 A "Decomposizione."

21 Q When you spoke to Dr. Gugliemi by telephone,
22 did you ever discuss anything besides business or the
23 translation?

24 MR. PREMO: Objection; mischaracterizes his
25 prior testimony and objection to the extent it calls

1 third paragraph under "Conclusions" on page 10443.

2 A Okay.

3 Q I'm at the third paragraph under
4 "Conclusions." Do you see that?

5 A Third paragraph, yes.

6 Q My next series of questions is going to be
7 directed to a time frame prior to May 27th of 1996.

8 Did you talk to Guido Gugliemi about what he
9 understood the term "rottura" to mean in the context
10:17 10 of this paragraph?

11 MR. PREMO: Objection, to the extent it calls
12 for an attorney-client communication, it is
13 privileged.

14 MS. UMBERGER: And you're instructing him not
15 to answer?

16 MR. PREMO: Yes.

17 (Instruction not to answer.)

18 MR. PREMO: At this time I wanted to make
19 clear for the record that we are establishing the
10:17 20 attorney-client communication for a specific time
21 period, but there was -- if you look at some of the --
22 I think you need to sort of establish at what time we
23 are referring to because it is vague at this point.

24 I want to be clear as to what it is that I am
25 asserting a privilege to.

1 A Not at all.

2 Q Did you ever talk to Dr. Gugliemi about his
3 understanding of what "rottura" meant in the context
4 of the 1983 Bari paper prior to May 27th, 1996?

5 MR. PREMO: Objection; calls for an attorney-
6 client communication, privileged.

7 MR. SCHWILLINSKI: I just want to state for
8 the record so it is clear, as I stated yesterday, I
9 believe there may also be a basis for work product
10:27 10 privilege as well.

11 MS. UMBERGER: And, again, this was based on
12 your belief that there was contemplated litigation in
13 1996?

14 MR. SCHWILLINSKI: That is correct.

15 BY MS. UMBERGER:

16 Q Do you recall whether you discussed the
17 translator's note that appears on U10443 with
18 Guido Gugliemi prior to May 27th, 1996?

19 MR. PREMO: Objection; privilege, calls for
20 attorney-client communication.

21 BY MS. UMBERGER:

22 Q Do you recall whether it was discussed with
23 Attorney Dawes the translation of "rottura" prior to
24 May 27th, 1996?

25 MR. PREMO: Objection; privilege, calls for

1 attorney-client communication.

2 MR. SCHWILLINSKI: Object to asked and
3 answered.

4 MS. UMBERGER: I believe this is 226.

5 (Deposition Exhibit 226 marked.)

6 BY MS. UMBERGER:

7 Q Mr. Cossu, what is this document,
8 Exhibit 226?

9 A Exhibit 226?

10:28 10 Q Yes.

11 A This is a test translation. It was faxed to
12 me on May 10th, as it says here, by Dr. Gugliemi to
13 assess my ability to do the actual translation of a
14 document that I had no knowledge of.

15 Q Did you speak to Dr. Gugliemi prior to
16 receiving this document?

17 A I did, and I offered to do a no charge or
18 free test translation for him.

19 Q When did he send you this document?

10:29 20 A May 10, 1996 -- 1996.

21 Q This indicates it was sent by fax?

22 A By fax, yes.

23 Q Did you have an understanding of why
24 Dr. Gugliemi wanted you to do a test translation for
25 him?

1 A I offered it.

2 Q I want to step back now to the first time you
3 ever spoke to Guido Gugliemi. Was that prior to May
4 10th, 1996?

5 A I have no recollection. The only contact
6 that I remember was this concerning the test
7 translation.

8 MR. PREMO: At this time, Michelle, I want to
9 represent to you that I produced a copy of this, or my
0 office last night. There is a section that appears to
1 have been redacted. It is not marked "redacted," it
2 was one or two handwritten sentences, sentences that
3 were handwritten, and I would like you -- I will
4 produce it in unredacted form, but you can ask the
5 witness at this time as to the statement.

16 If we take a break, I could have my office
17 fax you a copy of it.

18 MS. UMBERGER: That would be good.

19 Why don't we take a break and get the

10:31 20 unredacted copy, and I believe this will be my last
21 exhibit so we can go through it.

22 THE VIDEOGRAPHER: We are going off the
23 record at 10:30 am.

24 (Recess.)

25 THE VIDEOGRAPHER: We are going back on the

1 record at 11:07 a.m.

2 MS. UMBERGER: I'm going to have marked, for

3 the record, Exhibit 227, which is a document I

4 received just now from counsel.

5 (Deposition Exhibit 227 marked.)

6 MR. PREMO: Just to correct the record, the

7 document was produced yesterday evening. What we

8 produced just now is a portion that has one additional

9 sentence at the end that was handwritten in;

11:08 10 otherwise, the document was produced yesterday, and it

11 is Exhibit 226 -- or 225? This is 226.

12 BY MS. UMBERGER:

13 Q Mr. Cossu, do you recognize Exhibit 227?

14 A Yes, I do.

15 Q What is it?

16 A It is a fax that was sent to me by

17 Dr. Gugliemi containing the test -- the material that

18 I had to translate as a test.

19 Q And this fax is dated May 10th, 1996?

11:09 20 A It is.

21 Q So this document was sent to you by

22 Guido Gugliemi to translate before you made the

23 translations of the 1983 Bari paper; is that correct?

24 A That's correct.

25 Q Did this document come from your files?

1 MR. SCHWILLINSKI: Objection; vague.

2 THE WITNESS: Yes.

3 BY MS. UMBERGER:

4 Q When did you locate this document?

5 A I located this document after a call that I
6 received from Mr. Scheuster in -- I don't remember
7 what the month was, but it was probably February or
8 March, I don't remember, but it was this year. And
9 after talking to him for -- out of curiosity, I think
11:10 10 I mentioned that already, I just got to the -- my old
11 computer and I found the Gugliemi file.

12 Q Was this on your computer?

13 A Yes, it was. Wait a second.

14 Q This one?

15 A Yes.

16 Q Exhibit 227?

17 A No, this was not on the computer. This is
18 probably something that after I looked in the computer
19 enough that I probably found it looking into my paper
11:10 20 files.

21 Q In your paper files?

22 A Yes.

23 Q Where in your paper files did you find this
24 document?

25 A It was probably just one of those common

1 duty of a translator to consult an author prior to
2 translating a document.

3 MR. PREMO: Objection; mischaracterizes his
4 testimony.

5 BY MS. UMBERGER:

6 Q Let's go back to the research that you did on
7 the duties of a translator that you referenced earlier
8 this morning. Do you recall that?

9 A That's something that I did now, before the
11:21 10 testimony, after I knew that I was going to be called.

11 Q Is it your belief that you have a duty as a
12 translator to consult the author to find out what his
13 intent or what the words he used meant?

14 A Yes, and this can be found on many
15 authorities on the Net, for instance, about duties of
16 the translator. About translation services themselves
17 that promise that that's what they will do, that that
18 is the first duty of a translator is to
19 contact or have any other access to sources that will
11:22 20 prove that that is exactly what the original document
21 means.

22 Q Did you believe, then, that you had a duty to
23 consult with Dr. Gugliemi about what the words in the
24 1983 Bari paper meant?

25 A I did.

1 THE WITNESS: I do believe that.

2 MR. PREMO: I have no further questions.

3 MS. UMBERGER: I just have a couple.

4 MR. SCHWILLINSKI: If anybody cares, I have

5 no questions, but I reserve my right to ask questions.

6 MS. UMBERGER: We're off the record.

7 THE VIDEOGRAPHER: Off the record at 11:29.

8 (Interruption in the proceedings.)

9 THE VIDEOGRAPHER: Going back on the record

11:30 10 at 11:30 a.m.

11 FURTHER EXAMINATION

12 BY MS. UMBERGER:

13 Q Mr. Cossu, I'm still referring to Exhibit 224

14 that Mr. Premo asked you questions about.

15 In response to one of those questions you

16 stated that Exhibit 224 is a true and accurate

17 translation based on the required information that you

18 had, correct?

19 A Yes.

11:30 20 Q And part of that required information was

21 what Gugliemi intended to write; isn't that correct?

22 MR. PREMO: Objection; mischaracterizes prior

23 testimony. Assumes facts not in evidence.

24 MS. UMBERGER: You can read the question back

25 to the witness, please.

1 (Record read as follows:
2 "Q And part of that required
3 information was what Gugliemi
4 intended to write; isn't that
5 correct?")
6 THE WITNESS: Yes.
7 BY MS. UMBERGER:
8 Q And you do agree, do you not, that the word
9 "rottura" can mean "break"?
11:31 10 MR. PREMO: Objection; asked and answered,
11 and vague and ambiguous.
12 MR. SCHWILLINSKI: Inappropriate redirect.
13 BY MS. UMBERGER:
14 Q You can answer the question. If you need it
15 read back, I can do that?
16 THE WITNESS: Yes, go ahead.
17 (Record read as follows:
18 "Q And you do agree, do you
19 not, that the word 'rottura' can
11:31 20 mean 'break'?")
21 THE WITNESS: Yes, I do agree.
22 MS. UMBERGER: I have no further questions.
23 MR. PREMO: The last thing, Michelle, just a
24 housekeeping item, one of the exhibits, which is the
25 Italian sample letter included an individual patient

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4 I, the undersigned, a Certified Shorthand
5 Reporter of the State of California, do hereby certify:

6 That the foregoing proceedings were taken
7 before me at the time and place herein set forth; that
8 any witnesses in the foregoing proceedings, prior to
9 testifying, were placed under oath; that a verbatim
10 record of the proceedings was made by me using machine
11 shorthand which was thereafter transcribed under my
12 direction; further, that the foregoing is an accurate
13 transcription thereof.

14 I further certify that I am neither
15 financially interested in the action nor a relative or
16 employee of any attorney of any of the parties.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19

20

21

22

23

24

25

Dated: JUN 08 2005

Denise Bardsley
DENISE BARDSLEY
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